

Tentative Rulings for Wednesday, November 9, 2016, for Department 8, Judge LaPorte presiding

Hansen v Bernabe Case No. 15 C 0339

No opposition has been filed. Proper notice of motion was given. The motion to dismiss the action against the hospital defendants (Adventist Health System/ West et. al.) is granted.

Rivas v Ashton Park Case No. 12C 0305

The declaration of Celis in support of the motion to intervene and the reply points and authorities are in conflict concerning the amount of money Travelers has paid towards the contractor's defense costs. Can the defense costs attributable to the defense of McMillin be separated from the defense costs attributable to the defense of the subcontractor insureds? If so, what is the correct figure? The parties are to address whether the defense payments made to date can be considered token, in the context of this motion to intervene. (*Hodge v Kirkpatrick Dev Inc* (2005) 130 Cal.App.4th 540, 557.)

Are Traveler's interests adequately protected by McMillin's cross-complaints for indemnity and contribution against the subcontractors? (McMillin's cross-complaint filed on 3/29/16 contains causes of action against the subcontractors for breach of subcontract additional insured provisions and breach of the duty to defend.) Under the fact situation before the court, the insured is not in such a conflict with its insurer as was the case in Hodge. (*Id.* at 554 [insured therein had an interest to establish their damages resulted from mold rather than water, since State Farm had paid the insured \$150,000 for water damage].)

The parties are to address whether Travelers right of subrogation can be adequately protected without the need to file a complaint in intervention against all of the subcontractors, thus forcing the subcontractors to defend against the insured (McMillin) and the insurer (Traveler's) in this litigation. (*Id.* at 553-554 [Granted, intervention is unnecessary to protect State Farm's ▼subrogation rights from being destroyed by settlement of the construction defect lawsuit. The construction defect lawsuit defendants know of State Farm's ▼subrogation rights by virtue of State Farm's ▼motion for leave to intervene. Thus, a settlement between the Hodges and defendants would not bar State Farm's ▼recovery from defendants, unless State Farm ▼consented to the settlement. (*Griffin v. Calistro* (1991) 229 Cal.App.3d 193, 195-196].)

Finally, would it be helpful to the complete resolution of this lawsuit if the motion was first addressed by the special master appointed in this case?

There are no other tentative rulings. Consistent with California Rule of Court, rule 3.1308 (a)(2), no notice of intent to appear is required. If the non-prevailing party does not appear for hearing, the tentative ruling will become the order of the court. The prevailing party shall prepare an order for the court's signature.